S.B.Civil Second Appeal No.80/2004

Aalam Khan. vs. Smt. Rukhsar Begum.

Date : 23.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. BN Kalla, for the appellant.

Mr. Manish Shishodia, for the respondent.

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Heard learned counsel for the parties.

The brief facts of the case are that the plaintiff/respondent filed a suit for injunction against the defendant/appellant alleging that the defendant was husband of the plaintiff and their marriage took place about 50 years ago. Both have three children. When the plaintiff's daughter was of two years, the appellant forcibly removed the plaintiff from the house of her husband. The plaintiff started living with her mother and ultimately, purchased one plot in the year 1980 and raised construction of a building after obtaining permission from Municipal Corporation, Udaipur on 26.3.1985. The plaintiff apprehended that she may be dispossessed from her own house, therefore, she filed a suit for injunction. The defendant submitted written statement and admitted that the plaintiff is divorced wife of defendant. The defendant took a plea that in fact, he send some money to the plaintiff and by that money, the plaintiff purchased the house.

Two courts below, after appreciation of evidence, held

that the plaintiff is owner of the house and the defendant since admitted that she is divorced wife of the defendant and the defendant failed to prove any right, title and interest in the property, therefore, restrained the defendant from evicting the plaintiff from the house in dispute.

According to learned counsel for the appellant, the plaintiff did not produce her own mother in the witness box, therefore, adverse inference should have been drawn against the plaintiff.

Learned counsel for the appellant in this regard relied on the judgment of the Hon'ble Supreme Court delivered in the case of R. Rajagopal Reddy (dead) by L.Rs. and others vs. Padmini Chandrasekharan (dead) by L.Rs. reported in AIR 1996 SC 238 wherein the Hon'ble Supreme Court held that Sub-sections (1) and (2) of Section 4 of Benami Transactions (Prohibition) Act, 1988 are not retrospective.

I have considered the submissions of learned counsel for the parties and have perused the reasons given in the judgments of the two courts below.

It is clear from the facts mentioned above itself that this fact is not disputed that the sale deed is in the name of the plaintiff and permission to raise construction obtained by the plaintiff was of the year 1985. The defendant admitted that the plaintiff is divorced wife and the plaintiff purchased the house after the divorce. In

these facts and circumstances, if the two courts below found that the plea of the defendant that he paid the money for the purchase of the plot cannot be accepted. The Courts below have not committed any error of law or fact in passing the impugned judgments and decree.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya